IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.297 OF 2004

SRG Human Resources Development Limited ..Petitioner.

Vs.

Lakadia Enterprises Limited ..Respondent.

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Mr. A.K. Singh with Mr. Amol Surve for the Petitioner.
Mr. Abhishek V. Sawant i/b Little & Co. for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th June, 2007.

P.C. :

1. The Company Petition for winding up is founded on the averment that the Petitioner advanced to the company a loan of Rs.47 lacs under a cheque dated 1st December, 2000 drawn on ABN – AMRO Bank. According to the Petitioner the Respondent executed an acknowledgment in the form of a receipt recording payment of Rs.47 lacs towards the loan which would carry interest at the rate of 18% per annum payable every quarter. A statutory notice prior to the institution of winding up proceedings was served on the Respondent on 11th April, 2003 to which there was no reply. There was no

appearance on behalf of the company at the stage of admission. At the final hearing a reply has been filed on behalf of the Respondent. In the course of the submissions it has been urged on behalf of the Respondent that the real transaction between the parties was one whereby the Respondent was to allot 4700 shares to the Petitioner of the face value of Rs.10/- each at the rate of Rs.1,000/- per share. The case of the company is that accordingly while the payment of Rs.47 lacs was received from the Petitioner this was against the allotment of shares.

2. In order to establish the falsity of the defence, a certified true copy of the balance sheet of the Respondent has been placed on the record. The balance sheet for the year 2001-02 contains an acknowledgment in Schedule III of an unsecured loan of Rs.47 lacs which according to the Petitioner corresponds to the loan which was due and outstanding to the Petitioner. But apart from this, it is evident from the balance sheet that the original paid up capital of the company was 700 equity shares each of Rs.10/-. Hence, on 1st December, 2000 there was no question or occasion for the

Respondent to allot 4700 shares when the paid up capital consisted only of 700 shares. The balance sheet shows that a resolution was passed at an extra ordinary general meeting of the company on 30th November, 2002 to issue, offer and allot 49,300 shares. The balance sheet contains a list of three allottees to whom the aforesaid shares were allotted. It would suffice to note that the balance sheet does not contain any statement that those shares or any part thereof were allotted to the Petitioner. Hence, it is abundantly clear that the defence that has been filed is wholly lacking in bona fides.

3. In the circumstances, there is clearly a debt due and payable to the Petitioner. The Company has no bona fide defence and the Company had not responded even to the statutory notice issued prior to the institution of the winding up proceedings. The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b), save and except for the bracketed portion.